

United States
Court of Appeals
for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

GEORGE WILLIAM PICKARD and WILLIAM
HERSHEL CAGLE,

Appellees.

Transcript of Record

Appeal from the United States District Court
for the District of Nevada.



No. 13701

United States
Court of Appeals
for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

GEORGE WILLIAM PICKARD and WILLIAM
HERSHEL CAGLE,

Appellees.

Transcript of Record

Appeal from the United States District Court
for the District of Nevada.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Certificate of Clerk.....	28
Designation of Contents of Record on Appeal... 30	30
Docket Entries	27
Information for Violation.....	3
Minute Order December 11, 1952—Granting Motions to Dismiss	10
Motion to Dismiss Information Filed December 9, 1952	8
Notice of	9
Motion to Dismiss and Quash Information and Exonerate Bond Filed September 10, 1952....	6
Notice of	7
Names and Addresses of Attorneys of Record..	1
Notice of Appeal	26
Statement of Points on Which Appellant Intends to Rely on Appeal.....	29
Transcript of Hearing on Motion to Dismiss... 11	11

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

JAMES W. JOHNSON, JR.,

United States Attorney,

Post Office Building,

Reno, Nevada,

For the Appellant.

JOHN W. BONNER,

Boggs Building,

319 Fremont Street,

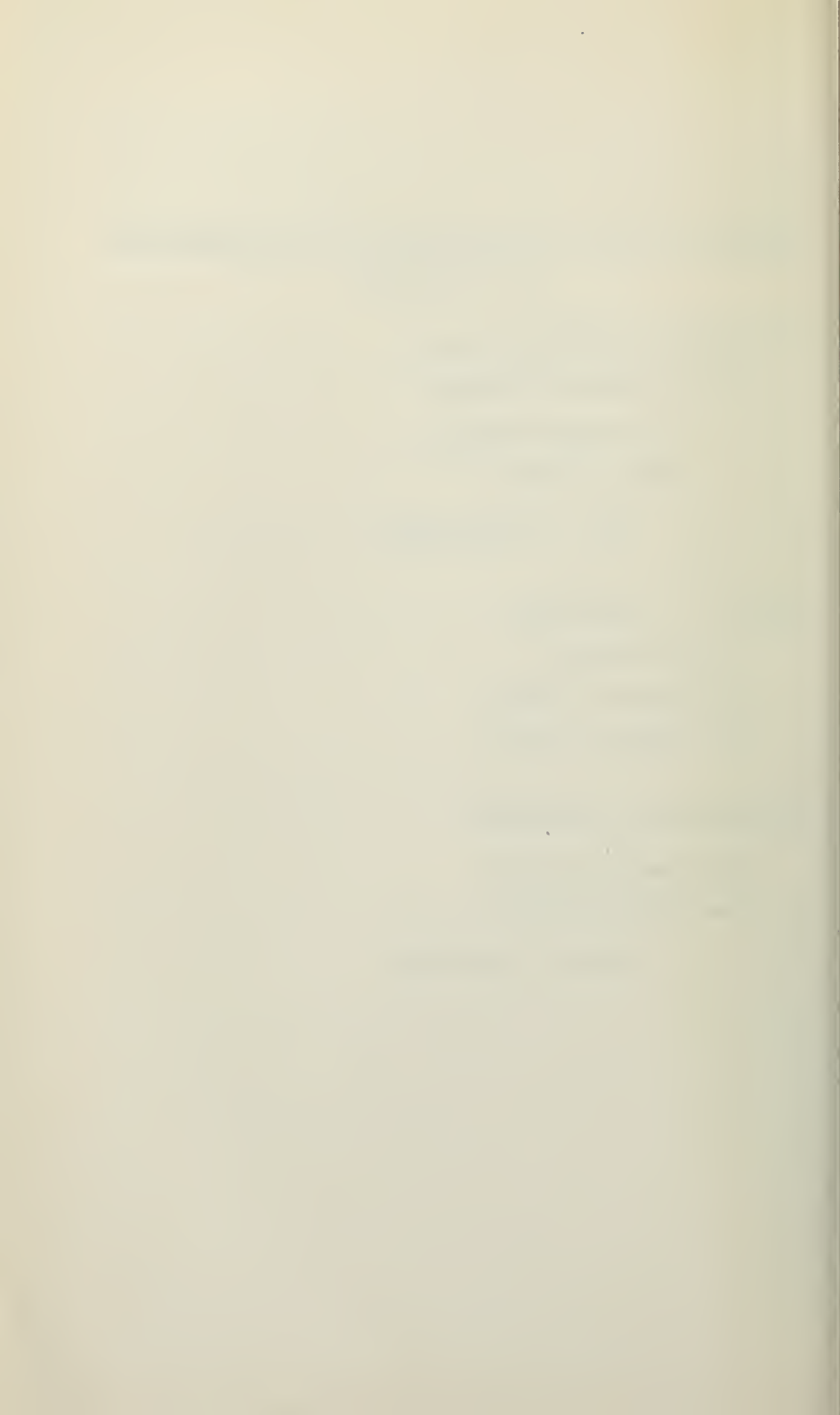
Las Vegas, Nevada;

D. FRANCIS HORSEY,

425 Fremont Street,

Las Vegas, Nevada,

For the Appellees.



In the United States District Court
for the District of Nevada

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE WILLIAM PICKARD and WILLIAM
HERSHEL CAGLE,

Defendants.

INFORMATION FOR VIOLATION

Sec. 641, T. 18, U. S. C.

The United States Attorney Charges:

Count I.

Sec. 641, T. 18, U.S.C.

That on or about September 10, 1950, at the Victory Village Housing Project, Henderson, Clark County, State and District of Nevada, George William Pickard, defendant named above, he then and there being a custodial employee of the Federal Public Housing Authority, at said Victory Village Housing Project, did embezzle certain property of the United States, to wit, eight (8) sheets of the value of \$2.50 each.

Count II.

(Sec. 641, T. 18, U.S.C.)

That on or about October 1, 1950, at the Victory Village Housing Project, Henderson, Clark County, State and District of Nevada, George William Pickard, defendant named above, he then and there

being a custodial employee of the Federal Public Housing Authority, at said Victory Village Housing Project, did embezzle certain property of the United States, to wit, a bundle of sheets and blankets, valued at approximately \$50.00.

Count III.

(Sec. 641, T. 18, U.S.C.)

That on or about November 15, 1950, at the Victory Village Housing Project, Henderson, Clark County, State and District of Nevada, George William Pickard, defendant named above, he then and there being custodial employee of the Federal Public Housing Authority, at said Victory Village Housing Project, did embezzle certain property of the United States, to wit, twelve (12) sheets, of the value of \$2.50 each.

Count IV.

(Sec. 641, T. 18, U.S.C.)

That on or about December 15, 1950, at the Victory Village Housing Project, Henderson, Clark County, State and District of Nevada, George William Pickard, defendant named above, he then and there being a custodial employee of the Federal Public Housing Authority, at said Victory Village Housing Project, did embezzle certain property of the United States, to wit, seven (7) woolen blankets, of the value of \$2.50 each.

Count V.

(Sec. 641, T. 18, U.S.C.)

That on or about September 10, 1950, at the Victory Village Housing Project, Henderson, Clark County, State and District of Nevada, William Hershel Cagle, defendant named above, did receive, conceal and retain, with intent to convert to his own use or gain, certain property of the United States, to wit, eight (8) sheets, of the value of \$2.50 each, knowing the same to have been embezzled.

Count VI.

(Sec. 641, T. 18, U.S.C.)

That on or about October 1, 1950, at the Victory Village Housing Project, Henderson, Clark County, State and District of Nevada, William Hershel Cagle, defendant named above, did receive, conceal and retain, with intent to convert to his own use or gain, certain property of the United States, to wit, a bundle of sheets and blankets, valued at approximately \$50.00, knowing the same to have been embezzled.

Count VII.

(Sec. 641, T. 18, U.S.C.)

That on or about November 15, 1950, at the Victory Village Housing Project, Henderson, Clark County, State and District of Nevada, William Hershel Cagle, defendant named above, did receive, conceal and retain, with intent to convert to his own use or gain, certain property of the United States, to wit, twelve (12) sheets, of the value of \$2.50 each, knowing the same to have been embezzled.

Count VIII.

(Sec. 641, T. 18, U.S.C.)

That on or about December 15, 1950, at the Victory Village Housing Project, Henderson, Clark County, State and District of Nevada, William Hershel Cagle, defendant named above, did receive, conceal and retain, with intent to convert to his own use or gain, certain property of the United States, to wit, seven (7) woolen blankets, of the value of \$2.50 each, knowing the same to have been embezzled.

MILES N. PIKE,
United States Attorney.

By /s/ WM. J. KANE,
Assistant U. S. Attorney.

[Endorsed]: Filed May 29, 1952.

[Title of District Court and Cause.]

MOTION TO DISMISS AND QUASH INFORMATION AND EXONERATE BOND

The defendants, George William Pickard and William Hershel Cagle move the Court to dismiss and quash that certain information filed herein on May 29, 1952, and to exonerate the bail of said defendants, upon the following grounds and for the following reasons:

That an indictment was filed herein on Septem-

ber 25, 1951, and pursuant to motion to dismiss said indictment same was dismissed by this Court on April 30, 1952.

That in the order dismissing same the following order was made:

“It is further ordered that the defendants, George William Pickard and William Hershel Cagle, and each of them, be held in custody or their bail be continued until May 30, 1952, pending the filing of a new indictment on information.”

That an indictment cannot be amended by the filing of an information.

JOHN W. BONNER,
D. FRANCIS HORSEY.

By /s/ JOHN W. BONNER,
Attorneys for Defendants.

Notice of Motion

To: United States of America, Plaintiff above named, and

To: Miles N. Pike, United States Attorney.

You and Each of You will please take notice that the defendants, George William Pickard and William Hershel Cagle, will on Monday the 22nd day of September, 1952, at the hour of 10:00 a.m., or as soon thereafter as counsel can be heard, move the Court to dismiss and quash information and exonerate bond in the above-entitled action on the

grounds and for the reasons shown in the foregoing motion.

Dated this 9th day of September, 1952.

JOHN W. BONNER,
D. FRANCIS HORSEY.

By /s/ JOHN W. BONNER,
Attorneys for Defendants.

Affidavit of mailing attached.

[Endorsed]: Filed September 10, 1952.

[Title of District Court and Cause.]

MOTION TO DISMISS INFORMATION

The defendant, William Hershel Cagle moves the Court to dismiss that certain information filed herein on May 25, 1952, on the following grounds and for the following reasons:

That said information is in effect an attempt to amend an indictment by information contrary to law and that pursuant to Rule 5C of the Federal Rules of Criminal Procedure said defendant was entitled to a preliminary examination prior to his arraignment which was denied him by virtue of said unlawful procedure taken as hereinabove referred to.

/s/ JOHN W. BONNER,
Attorney for Defendant Wil-
liam Hershel Cagle.

NOTICE OF MOTION

To: United States of America, Plaintiff above named, and Miles N. Pike, United States Attorney:

You and Each of You will please take notice that the defendant, William Hershel Cagle, will on Wednesday, the 10th day of December, 1952, appear at the hour of 11:00 a.m. or as soon thereafter as counsel can be heard, move the Court to dismiss the information in the above-entitled action on the grounds and for the reasons shown in the foregoing motion.

Dated this 9th day of December, 1952.

/s/ JOHN W. BONNER,
Attorney for Defendant,
William Hershel Cagle.

319 Fremont Street, Las Vegas, Nevada.

Receipt of Copy acknowledged.

[Endorsed]: Filed December 9, 1952.

United States District Court for the
District of Nevada

No. 12,332

THE UNITED STATES

vs.

GEORGE WILLIAM PICKARD and WILLIAM
HERSHEL CAGLEORDER MOTION TO DISMISS AND QUASH
INFORMATION AND EXONERATE BOND
AND MOTION TO DISMISS INFORMA-
TION BE GRANTED

(Copy of Minute Order of Dec. 11, 1952.)

This being the time heretofore fixed for hearing on Motion to Dismiss and Quash Information and Exonerate Bond, Motion for Severance, and Motion to Dismiss Information, and the same coming on regularly this day. The defendants are present and with their attorneys, John W. Bonner, Esq., and D. Francis Horsey, Esq. William P. Compton, Esq., Assistant U. S. Attorney, appears for and on behalf of the plaintiff. The Motions to Dismiss are taken up first. Following arguments by counsel, namely, Messrs. Bonner and Compton, counsel stipulate that no complaint set forth in the present information was ever filed with a U. S. Commissioner. It Is Ordered that the Motion to Dismiss and Quash Information and Exonerate Bond and the Motion to Dismiss Information be, and they hereby are,

defendant Cagle being represented by Mr. John Bonner. The following proceedings were had:

The Court: I would be glad to hear from you, Mr. Bonner.

Mr. Bonner: There is a little confusion in my mind as to the disposition of a motion that was filed in case No. 12,261, which was indictment against the same defendants. We made a motion to quash the information and exonerate the bond on the [1*] ground that this Court had made an order sustaining the motion to dismiss on the grounds the complaint did not constitute a public offense and allowed the government until May 30, 1952, to file a new indictment, an information. Now they filed an information on the 29th day of May, 1952, and gave it a new number, No. 12,332, which charged misdemeanors, so it wasn't an amendment apparently, but a new information entirely, a new case number, and changing the charges from a felony to a misdemeanor.

Now in the letter I received from Mr. Compton, dated October 7, 1952, he stated as follows:

“Your motion in the above matter was on yesterday's calendar and the Court was informed that we have no objection to the return of the bond. However, it was decided by the Court to leave the bond in effect and the motion has been set for hearing December 11, 1952 * * *,” etc.

Now I did not know whether your Honor had overruled our motion, with the exception of exoneration

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

of the bond, or whether you had continued the matter to be argued at this time, that is, the entire motion.

The Court: You mean your motion directed to this new case?

Mr. Bonner: Yes.

The Court: No, there is no ruling on it at all.

Mr. Bonner: Then, your Honor, I would like to argue the first motion at this time, motion to dismiss this information, on the grounds that you cannot amend an indictment by an information, and the authorities are attached to the Notice of the Motion.

Now it is elementary—I think your Honor will agree with me that this is an elementary principle of law—that an indictment may not be amended by an information. It would have to be resubmitted to a grand jury. So that is what they have attempted to do here, to amend this indictment by filing an information for a misdemeanor, which they cannot do, your Honor, because if they want to drop their felony case altogether and start a new case, they have to proceed by complaint and we are entitled to a preliminary hearing. Under Rule 3 of the Federal Rules of Criminal Procedure, it says:

“The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a commissioner or other officer empowered to commit persons charged with offenses against the United States.”

“Rule 4. Warrant or Summons Upon Complaint.
“(a) Issuance. If it appears from the complaint

that there is probable cause to believe that an offense has been committed, and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it * * *."

Then it talks about the form of warrant.

"Rule 5: An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith."

Now they have not got any of that, your Honor, and they are trying to obviate the necessity of all those proceedings by what they probably call an amendment of the indictment, which they cannot do.

The Court: Let me ask the United States attorney a question. It is not your custom, it has not been the practice at any time in the United States attorney's office to file information of misdemeanors without commissioner's complaint?

Mr. Compton: The usual procedure is to file it directly with the Court.

The Court: A misdemeanor, without opportunity for preliminary hearing?

Mr. Compton: An information can be filed, your Honor, without permission of the Court at any time under Rule 7 and the usual course in our office is

to file an information without a commissioner's complaint. The last line, "An information may be filed without leave of court."

The Court: Well, these two rules should be read together, it seems to me. I can't see anything in Rule 7 that excludes the necessity of filing a complaint with a magistrate.

Mr. Compton: Well, your Honor, you wouldn't file an information with the commissioner, of course.

The Court: I know that, but before you file either an information or an indictment, it seems to me that the complaint should be filed with the commissioner or some other magistrate, with opportunity for the defendant to have a hearing.

Mr. Compton: Well, we have never followed that practice, your Honor.

The Court: Where would you get your warrant?

Mr. Compton: File an information and the warrant is issued by the district clerk.

The Court: You take this to apply in any case, felony or misdemeanor, that an information can be filed without leave of Court?

Mr. Compton: No, your Honor. In felony cases it specifically provides that unless there is a waiver by the defendant in open court, an information can not be filed by the United States attorney, but in respect to misdemeanors that isn't true.

The Court: How do you avoid Rule 3?

Mr. Compton: Your Honor, we may have been wrong, but I never considered that that was in a case such as this mandatory.

The Court: Why not? Where do you find anything to avoid it?

Mr. Compton: There is nothing specifically there, of course. Your Honor, let us look at it this way——

The Court: Let me look at this here. A misdemeanor under federal statutes may be punished by substantial penalties.

Mr. Compton: That is correct, your Honor.

The Court: Not more than a year, but as much as one year or as much as a thousand dollar fine, or both. Now a man who is put on trial for a misdemeanor without having an opportunity to have a hearing to determine whether or not there is probable cause, it would seem to me that one of the purposes [6] for giving a preliminary hearing is to prevent, so far as may be possible to do so, a person to be wrongfully placed upon trial, and if the government can not file before a magistrate, he certainly would be permitted to hail an individual before a court and jury.

Mr. Compton: Well, you know, your Honor, among these cases——

The Court (Interceding): Draw my attention to any rule that would excuse the government in misdemeanor cases from proceeding by compliance with Rules 3, 4, and 5. There is no exception stated to the rule, so far as misdemeanors are concerned and I do not think there should be, Mr. Compton. This is the first time it ever came to my notice that people were charged with misdemeanors in this court without having opportunity for a hearing before a magistrate.

Mr. Compton: Is there any difference——

The Court (Interceding): Yes, what is the purpose of having a hearing before a magistrate?

Mr. Compton: What I started to say, your Honor, is this, in many many of these cases there is no commissioner's complaint filed. The case is presented to a grand jury.

The Court: An indictment is a different [7] thing.

Mr. Compton: I realize the element of probable cause is considered in the grand jury.

The Court: Can you cite me any authority that in any case Rule 3 should not be complied with?

Mr. Compton: There is a statement, your Honor, in——

The Court (Interceding): In the first place, so the record may be clear, you will stipulate, will you not, on the part of the government, that there was no complaint charging the offense set forth in this present information, filed with the commissioner or other officer?

Mr. Compton: You mean on this information?

The Court: Yes.

Mr. Compton: I couldn't do otherwise, your Honor. Let me read a paragraph from Barron & Holzoff Federal Practice and Procedure, Vol. 4, and it appears at page 55 under "Classification of Offenses." It says:

"Therefore, all petty offenses and all misdemeanors may be prosecuted either by indictment or by information. No indictment is necessary under the constitution, rule or statute. An infor-

mation for a misdemeanor may be filed without regard to the pendency or result of proceedings before a magistrate or United States [8] Commissioner to bind a defendant over to the grand jury.

“Leave to file an information is unnecessary in view of subdivision (a) of this rule. Prior to this rule, however, leave to file an information was a condition precedent and its granting was discretionary with the trial court.”

The Court: Have you authority on that first statement?

Mr. Compton: Your Honor. Judge Holtzoff cites *Yaffee v. United States*, 276 Federal 497. He also cites *United States v. Achen*, 267 Fed. 595.

Mr. Bonner: We will agree that if complaint is filed and the grand jury meets and returns an indictment, no proceedings are required before a commissioner, where it has gone to the grand jury, but we take this position, and I am sure we are right, we are entitled to either a grand jury indictment or a preliminary hearing, one or the other, and that is our position, so that the law he has urged is correct, of course, because if a complaint is filed and grand jury returns an indictment, there is no need of the commissioner determining whether or not there is probable cause, because that is what the grand jury does. But in this case the government is attempting to circumvent both the grand jury and magistrate, which can not be done. They do not intend to go to the grand jury in this case. They [9] want to set it down for trial now without submitting it either to the commissioner or the

grand jury, which they may not do. That is our contention. In other words, we are entitled to a hearing some place to see if there is probable cause before we are required to plead.

The Court: This, of course, wouldn't be any guide, but consider our State court practice. Generally, I suppose, those statutory mandates are all made with an eye to comply with the federal statutes provisions. No one could be tried in the District Court of Nevada in a reasonable jurisdiction unless he has or has had an opportunity to have had a preliminary examination. Now you can't think of any case where that would happen.

Mr. Compton: Your Honor, I know personally in cases in the District Court over here, whether they violated——

The Court: What kind of cases?

Mr. Compton: They are criminal cases.

The Court: I know differently, so there is no use arguing that. I know differently. It was with authority of law.

Mr. Compton: What I call to your attention—I recall a case when Mr. Jones was district attorney and the Justice of the Peace dismissed the matter for lack of probable cause and then the district attorney turns around and files an information [10] and gets them directly into court.

The Court: He must have had permission of the district judge to file the information.

Mr. Bonner: There must have been a preliminary hearing and denial by the magistrate. He must

first have had a preliminary hearing and the justice of the peace must have refused to retain him and then he obtained leave of the district judge and filed an information.

The Court: Take the reading of this section, Rule 5, subdivision (c), now look at that:

“The defendant shall not be called upon to plead. If the defendant waives preliminary examination, the commissioner shall forthwith hold him to answer in the district court. If the defendant does not waive examination, the commissioner shall hear the evidence within a reasonable time. * * *”

Now that is that Rule 5 and under Rule 5 any one who is arrested has certain rights:

“An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer [11] empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith.”

Now there is another interesting thing that I notice. If you will read the recent Supreme Court decisions of the United States, I don't suppose there is anything new about these cases, but you see that the Court is inclined to look with disfavor upon proceedings in course of the prosecution such as a confession—say a confession is obtained without any coercion or improper conduct on the part

of any officer, but it would appear to the Court that the defendant has not been brought in before a magistrate for as short a period as 24 hours, they are critical and perhaps justly so. There is no reason in the world why a man who is arrested, charged with an offense, should not be brought before a magistrate who can give him a hearing and arraign him and give him opportunity for counsel. He is not to be picked up on misdemeanor charges and put in jail for an indefinite time to suit the convenience of some prosecuting [12] officer. This Rule 5, subdivision (a):

“An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States.
* * *”

Now these defendants are entitled to be brought before the magistrate immediately without unnecessary delay. Now Rule (b):

“The commissioner shall inform the defendant of the complaint against him, of his right to retain counsel and of his right to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him.”

You know those are very solunn rules. They are rules that go right to the bulwarks of our freedom.

If a man can be picked up on any charge, misdemeanor or felony, and cast into jail and lay there for a week without an opportunity to have counsel, you can see why there are so many reasons [13] for confessions across the Iron Curtain. Some of those men have been in custody as long as two years and this is the thing that prevents that kind of conduct on the part of government agents or misguided or perhaps malicious officials, prosecuting attorneys. Of course, we haven't anything like that in this State. No inference of that, but I am talking about why we have these rules. Now I don't see where there is any distinction here or any waiver of right to have a complaint and be speedily brought before a United States marshal or some magistrate. I can't see——

Mr. Compton: I am frank to say I am in the position of shirking responsibility of this matter; also I am frank to say I wouldn't have done it the way it was done. This information was filed up North.

The Court: I am going to look at these cases. It seems to me in any case where there is misdemeanor or felony these Rules 3, 4, and 5 should be regarded. I do not know of any exception. Where is your case you cited to me a little while ago?

Mr. Compton: U. S. vs. Yaffee, 276 Federal, 497.

The Court: I don't want to be rash about this or make any improper order, but have you any contention to make against this idea? Do you see anything in the [14] law or any case that does

away with the necessity of a complaint before a magistrate?

Mr. Compton: No, I don't your Honor. As your Honor said, these rules must be read together. In all fairness I can't see how the government can escape the necessity of filing a commissioner's complaint. I know it has been done in other cases.

The Court: What is the citation Holtzoff makes in the Yaffee case?

Mr. Compton: In the text he says, speaking of petty offenses and misdemeanors, he says:

"No indictment is necessary under the constitution, rule or statute. An information for a misdemeanor may be filed without regard to the pendency or result of proceedings before a magistrate or United States Commissioner to bind a defendant over to the grand jury."

The Court: Mr. Bonner, have you found any cases cited in this edition under federal rules?

Mr. Bonner: No, I have not, but I would like to point out both of these cases refer to a matter of proceeding before a commissioner and thereafter the grand jury meets and returns indictment, therefore the commissioner's proceeding vacated, which we deem is not in point at all in the case before the [15] Court. We don't have that situation at all.

Mr. Compton: We do have a similar situation. We have an indictment.

Mr. Bonner: Well, you have dropped your indictment, so you are starting out all over again with a misdemeanor.

The Court: Under the Fifth Amendment of the federal constitution it says: (Reads.)

Mr. Compton: That its the situation we have here. Your Honor sustained motion to dismiss the indictment for insufficiency and then an information is filed. That is exactly the situation we have here.

The Court: That would amount to amending an indictment by an information. You have followed the Court's ruling by filing an information, but you have done more than that, you have reduced the degree of the offense here, but taking your last statement, that would amount to saying that you have amended the indictment by an information, on the basis of your last statement. I don't see how you can avoid the effect of Rules 3, 4, and 5. Is there anything in the rules anywhere which exempts misdemeanors from their operation?

Mr. Bonner: I have never found any, your Honor. I do not think there is any way they can get around it.

Mr. Compton: I do not know anything exempting it, your [16] Honor, but on the other hand I do not find anything——

The Court (Interceding): I am going to grant the motion on the ground that neither one of the defendants was first brought before the magistrate in compliance with the rules. I am doing that because I have not been advised that misdemeanors have been exempted from the operation of these statutes and I do not think the district attorney has any cases to show. In other words, it is ad-

mitted by the government here that no complaint was made before a commissioner or other officer empowered to commit persons charged with offenses against the United States, as authorized or required by Rule 3. No warrant has been issued after the appearance of probable cause, nothing has occurred that would indicate that there is probable cause; in other words, there was no hearing. Rules 3, 4, and 5 have not been complied with, so the case is dismissed, defendants are released from custody and bail is exonerated. [17]

State of Nevada,
County of Clark—ss.

I, Marie D. McIntyre, the duly appointed official court reporter in the United States District Court, for the District of Nevada, do hereby certify: That I was present and took verbatim shorthand notes of the proceedings had at the hearing on Motion to Dismiss in the case entitled, United States of America, Plaintiff, vs. George William Pickard and William Hershel Cagle, Defendants, No. 12-332, held in Las Vegas, Nevada, on December 11, 1952, and that the preceding pages, numbered 1 to 17 inclusive, comprise a full, true, and correct transcript of my said shorthand notes, to the best of my knowledge and ability.

Dated at Las Vegas, Nevada, January 31, 1953.

/s/ MARIE D. McINTYRE,
Official Reporter.

[Endorsed]: Filed February 2, 1953.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of Appellant: United States of America.

Name and address of Appellant's attorney: Miles N. Pike, Esquire, Federal Building, Reno, Nevada.

Offense: Embezzlement of property of the United States; having knowingly received embezzled property of the United States. Alleged violation. Section 641, Title 18, U.S.C.

Concise statement of judgment or order, giving date, and any sentence: Order of United States District Court entered December 11, 1952, granting defendant's motion to dismiss the information as to each of the two defendants.

The above-named appellant, United States of America, upon authorization so to do by the Solicitor General of the United States, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-entitled order.

Dated: January 7, 1953.

/s/ MILES N. PIKE,

United States Attorney,
Attorney for Appellant.

[Endorsed]: Filed January 8, 1953.

[Title of District Court and Cause.]

STATEMENT OF DOCKET ENTRIES

1. Information for Violation of Sec. 641, T. 18, U.S.C. filed May 29, 1952.

2. Arraignment: Not arraigned.

Motions to dismiss filed 9/10/52 and 12/9/52.

3. Plea to indictment or information: No pleas entered.

Motions to dismiss heard and granted Dec. 11, 1952.

4. Motion to withdraw plea of guilty denied.

5. Trial by jury, or by court if jury waived.

6. Verdict or finding of guilt: Motions to dismiss granted Dec. 11, 1952.

7. Judgment—(with terms of sentence) or order: Ordered that defts'. motions to dismiss granted, bonds exonerated and defts. released from custody. Entered: December 12, 1952.

8. Notice of appeal filed: January 8, 1953.

Dated: January 8, 1953.

AMOS P. DICKEY,
Clerk.

Attest:

By /s/ O. F. BRATT.

Deputy Clerk.

[Title of District Court and Cause.]

United States of America,
District of Nevada—ss.

CERTIFICATE OF CLERK

I, Amos P. Dickey, Clerk of the United States District Court for the District of Nevada, do hereby certify that the attached and accompanying documents are the originals filed in this Court, or true and correct copies thereof, as called for by the Designation of Contents of Record on Appeal filed herein by the appellant, and that they constitute the record on appeal herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 3rd day of February, 1953.

AMOS P. DICKEY,
Clerk,

[Seal] By /s/ C. R. DAVENPORT,
Deputy Clerk.

[Endorsed]: No. 13701. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. George William Pickard and William Hershel Cagle, Appellees. Transcript of Record. Appeal from the United States District Court for the District of Nevada.

Filed February 4, 1953.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13701

UNITED STATES OF AMERICA,

Appellant,

vs.

GEORGE WILLIAM PICKARD and WILLIAM
HERSHEL CAGLE,

Appellees.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

The points on which appellant intends to rely on appeal are as follows:

1. The District Court erred in a ruling of law when it dismissed the Information.

2. The District Court erred in concluding the defendants were entitled to a preliminary hearing under Rule 5, Federal Rules of Criminal Procedure, or any other rule, prior to the filing of the Information.

Dated: Reno, Nevada, February 12, 1953.

JAMES W. JOHNSON, JR.,
United States Attorney,

By /s/ ROBERT L. McDONALD,
Assistant U. S. Attorney.

[Endorsed]: Filed February 13, 1953.

[Title of Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Pursuant to Rule 19(6), Rules of Practice of United States Court of Appeals for the Ninth Circuit, the appellant hereby designates for inclusion in the record on appeal to the United States Court of Appeals for the Ninth Circuit taken by Notice of Appeal filed January 9, 1953, the following portions of the record, proceedings, and evidence in the above case:

1. The Information, filed herein May 29, 1952.
2. The Motion to Dismiss and Quash Information and Exonerate Bond on behalf of both defend-

ants, George William Pickard and William Hershel Cagle, filed herein September 10, 1952.

3. The Motion to Dismiss Information on behalf of defendant, William Hershel Cagle, filed herein December 9, 1952.

4. The Order of the Court granting said Motions to Dismiss the Information, entered December 11, 1952.

5. Transcript of all testimony, affidavits, proceedings, motions, arguments, and rulings of the Court given, made and had at the hearing of defendants' motions on December 11, 1952.

6. Notice of Appeal.

7. This Designation of Contents of Record on Appeal.

8. Transcript of Minutes of the Clerk entered at the hearing on December 11, 1952.

9. Transcript of docket entries by the Clerk of the Court pertaining to said motions and the order granting the same, and appellate proceedings had herein.

JAMES W. JOHNSON, JR.,
United States Attorney,

By /s/ ROBERT L. McDONALD,
Assistant U. S. Attorney.

[Endorsed]: Filed February 13, 1953.

